

**AGREEMENT BETWEEN
LAKE COUNTY, FLORIDA AND
THE HOWARD E. NYHART COMPANY, INC. FOR
ACTUARY SERVICES FOR THE GASB
ISSUED STATEMENT 45**

RFP 11-0026

This is an Agreement between Lake County, Florida, a political subdivision of the State of Florida, hereinafter referred to as the COUNTY, by and through its Board of County Commissioners, and The Howard E. Nyhart Company, Incorporated, a foreign corporation authorized to do business in the State of Florida, its successors and assigns, hereinafter referred to as CONSULTANT.

WITNESSETH:

WHEREAS, the COUNTY publicly submitted a Request for Proposals (RFP), #11-0026, for procurement of a qualified consultant to perform an actuarial study for the Governmental Accounting Standards Board (GASB) in accordance with Issued Statement 45, regarding the "Accounting and Financial Reporting by Employers for Post-Employment Benefits Other than Pensions" reporting requirements; and

WHEREAS, the CONSULTANT desires to perform such services subject to the terms of this Agreement.

NOW, THEREFORE, IN CONSIDERATION of the mutual terms, understandings, conditions, promises, covenants and payment hereinafter set forth, and intending to be legally bound, the parties hereby agree as follows:

Article 1. Recitals

1.1 The foregoing recitals are true and correct and incorporated herein by reference.

Article 2. Purpose

2.1 The purpose of this solicitation is to retain a qualified consultant to perform an actuarial study for the Governmental Accounting Standards Board (GASB) in accordance with Issued Statement 45, regarding the "Accounting and Financial Reporting by Employers for Post-Employment Benefits Other than Pensions" reporting requirements.

Article 3. Scope of Services

3.1 On the terms and conditions set forth in this Agreement, the COUNTY hereby engages CONSULTANT to perform the services more specifically detailed in **Exhibit A**, General Scope of Services, attached hereto and incorporated herein by reference. Hourly billing rates are attached hereto and incorporated herein by reference as **Exhibit B**, if needed for additional services.

3.2 The CONSULTANT agrees and acknowledges that time is of the essence in completing the Scope of Services identified herein. The term of this Agreement shall commence on October 1, 2011, and shall remain in effect until December 31, 2013. The CONSULTANT shall provide its written report annually no later than sixty (60) days after receipt of all required data. Continuation of the performance period beyond the initial period is a COUNTY prerogative, and not a right of the CONSULTANT. This prerogative may only be exercised when such continuation is clearly in the best interest of the COUNTY. This Agreement shall be effective upon the date of execution by the COUNTY, shall remain in effect until such time as the services acquired in conjunction with this Agreement have been completed, delivered and accepted by the COUNTY, and will then remain in effect until completion of the expressed and/or implied warranty periods, if any. The COUNTY shall have the option to renew this Agreement for one (1) two-year term at the same pricing, terms and conditions.

3.3 The CONSULTANT shall coordinate and work with any other consultants retained by the COUNTY. CONSULTANT acknowledges that nothing herein shall be deemed to preclude the COUNTY from retaining the services of other persons or entities undertaking the same or similar services as those undertaken by the CONSULTANT or from independently developing or acquiring materials or programs that are similar to, or competitive with, the services provided under this Agreement.

3.4 In addition to any other termination provisions provided herein, should the CONSULTANT fail to complete the work within the performance period cited above and any optional renewal period exercised by the COUNTY, it is hereby agreed and understood that the COUNTY reserves the authority to cancel this Agreement with the CONSULTANT and to secure the services of another consultant to complete the work. If COUNTY exercises this authority, COUNTY shall be responsible for reimbursing the CONSULTANT for work which was completed and found acceptable in accordance with the contract specifications. Additionally, the COUNTY may, at its option, demand payment from CONSULTANT, through an invoice or credit memo, for any additional costs over and beyond the original contract price which were incurred by the COUNTY as a result of having to secure the services of another consultant. CONSULTANT shall honor any such invoices or credit memos submitted to the CONSULTANT by the COUNTY under these circumstances.

3.5 In addition to any other termination provisions provided herein, the COUNTY reserves the right to terminate the Agreement if CONSULTANT materially fails to fulfill any of its obligations under this Agreement, if the service does not conform to the specifications, or if the CONSULTANT materially fails to comply with any federal, state or local statutes, rules and regulations applicable to this Agreement, including health and safety rules and regulations.

A. If any service performed pursuant to this Agreement is found to be defective or does not conform to the specifications contained herein, the COUNTY reserves the right to require corrective action as appropriate, which may include, but is not limited to, ordering re-performance of service or the termination of the Agreement for default. The COUNTY will not be responsible for paying for any service that does not conform to the Agreement specifications.

B. In the event of termination under this section, the COUNTY shall provide thirty (30) calendar days written notice of its intent to terminate, and shall provide CONSULTANT an opportunity to consult with the COUNTY regarding the reason(s) for termination. The COUNTY may take any other remedies that may be legally available.

Article 4. Payment

4.1 COUNTY shall pay, and CONSULTANT shall accept, as full and complete payment for the timely and complete performance of its obligations under this Agreement the following:

- | | |
|---|-------------------|
| 1. Provide Actuarial Services – Full Report GASB 45 OPEB statements per the terms, conditions, scope listed herein for FY 2011/2012 | \$6,800.00 |
| 2. Actuarial Services – GASB 45 – Roll Forward Method as permitted under GASB Rules for FY 2012/2013 | \$1,500.00 |
| 3. Optional on-site meeting with COUNTY, if requested by the COUNTY | \$500.00 |

For any additional services needed, the parties shall negotiate a fee utilizing the hourly rates set forth in **Exhibit B**, attached hereto and incorporated herein by reference.

4.2 The COUNTY shall make payment upon receipt of a conforming invoice or invoices. An invoice shall be submitted at the completion of the work, and if additional services are requested, invoices shall be submitted as outlined in the additional scope of work(s). Payments shall be tendered in accordance with the Florida Prompt Payment Act, Part VII, Chapter 218, Florida Statutes. Invoices shall be delivered to Susan Irby, Director, Employee Services, at P.O. Box 7800, Tavares, Florida 32778, and shall include the RFP number and identify the tasks completed.

4.3 All invoices shall contain the Agreement and/or purchase order number, date and location of delivery or service, and confirmation of acceptance of the goods or services by the appropriate COUNTY representative. Failure to submit invoices in the prescribed manner will delay payment, and the CONSULTANT may be considered in default of this Agreement and this Agreement may be terminated.

4.4 In the event any part of this Agreement is to be funded by federal, state, or other local agency monies, the CONSULTANT hereby agrees to comply with all requirements of the

funding entity applicable to the use of the monies, including full application of requirements involving the use of minority firms, women's business enterprises, and labor surplus area firms. The CONSULTANT is advised that payments under this Agreement may be withheld pending completion and submission of all required forms and documents required of the CONSULTANT pursuant to the grant funding requirements. A copy of the requirements shall be supplied to the CONSULTANT by the COUNTY upon request.

4.5 CONSULTANT acknowledges and agrees that if this Project is being supported in whole or in part by Federal and/or State funding, CONSULTANT shall utilize the U.S. Department of Homeland Security's E-Verify system in accordance with the terms governing use of the system to confirm the employment eligibility of:

- A. All persons employed by the CONSULTANT during the term of this Agreement to perform employment duties within Lake County; and
- B. All persons, including subcontractors, assigned by the CONSULTANT to perform work pursuant to the contract.

Article 5. County Responsibilities

5.1 COUNTY shall promptly review the services performed by CONSULTANT and provide direction to CONSULTANT as needed. COUNTY shall designate a County staff member to act as COUNTY'S Project Manager.

5.2 The COUNTY will provide to the CONSULTANT all necessary and available data, data developed and/or within the possession of the COUNTY, and any other data the COUNTY possesses that would be useful to the CONSULTANT in the completion of the required services.

Article 6. Special Terms and Conditions

6.1 Qualifications. Firms or individuals will be registered with the State of Florida and have obtained at least the minimum thresholds of education and professional experience required by the statutes to perform the services contained herein.

6.2 Assignment of Agreement. This Agreement shall not be assigned except with the written consent of the COUNTY'S Procurement Services Director. No such consent shall be construed as making the COUNTY a party to the assignment or subjecting the COUNTY to liability of any kind to any assignee. No assignment shall under any circumstances relieve the CONSULTANT of liability and obligations under this Agreement and all transactions with the COUNTY must be through the CONSULTANT. Additionally, unless otherwise stipulated herein, the CONSULTANT shall notify and obtain prior written consent from the County prior to being acquired or subject to a hostile takeover. Any acquisition or hostile takeover without the prior consent of the COUNTY may result in termination of the contract for default.

6.3 Insurance. An original certificate of insurance, indicating that CONSULTANT has coverage in accordance with the requirements of this section, shall be furnished by the CONSULTANT to the COUNTY before any work under this Agreement begins. CONSULTANT shall purchase and maintain at its expense, at all times during the term of this Agreement, insurance policies from a company or companies authorized to do business in the State of Florida, and which are acceptable to the COUNTY. Said insurance policies shall insure the CONSULTANT against any and all claims, demands and any causes of action whatsoever, for injuries received or damage to property arising from or relating to the performance or non-performance of duties, services and/or obligations of the CONSULTANT under the terms and provisions of this Agreement. CONSULTANT is responsible for timely provision of certificate(s) of insurance to the COUNTY at the certificate holder address evidencing conformance with the Agreement requirements at all times throughout the term of this Agreement. Such policies of insurance, and conforming certificates of insurance, shall insure the CONSULTANT in accordance with the following minimum limits:

General Liability insurance on forms no more restrictive than the latest edition of the Occurrence Form Commercial General Liability policy (CG 00 01) of the Insurance Services Office or equivalent without restrictive endorsements, with the following minimum limits and coverage:

| | |
|-----------------------------------|-----------|
| Each Occurrence/General Aggregate | \$500,000 |
| Products-Completed Operations | \$500,000 |
| Personal & Adv. Injury | \$500,000 |
| Fire Damage | \$50,000 |
| Medical Expense | \$5,000 |
| Contractual Liability | Included |

Automobile liability insurance, including owned, non-owned, and hired autos with the following minimum limits and coverage:

| | |
|------------------------------|-----------|
| Combined Single Limit | \$300,000 |
| Or | |
| Bodily Injury (per person) | \$100,000 |
| Bodily Injury (per accident) | \$300,000 |
| Property Damage | \$100,000 |

Workers' compensation insurance based on proper reporting of classification codes and payroll amounts in accordance with Chapter 440, Florida Statutes, and/or any other applicable law requiring workers' compensation (Federal, maritime, etc). If not required by law to maintain workers compensation insurance, the CONSULTANT must provide a notarized statement that if he or she is injured, he or she will not hold the COUNTY responsible for any payment or compensation.

Employers Liability with the following minimum limits and coverage:

| | |
|---------------|-----------|
| Each Accident | \$100,000 |
|---------------|-----------|

| | |
|-----------------------|-----------|
| Disease-Each Employee | \$100,000 |
| Disease-Policy Limit | \$500,000 |

Professional Liability and/or specialty insurance (medical malpractice, engineers, architect, consultant, environmental, pollution, errors and omissions, etc.) as applicable with minimum limits of \$500,000 and annual aggregate of \$1,000,000.

Lake County, a Political Subdivision of the State of Florida, and the Board of County Commissioners shall be named as additional insured as their interest may appear on all applicable liability insurance policies.

Certificate(s) of insurance shall identify the contract number in the Description of Operations section of the Certificate.

Certificate(s) of insurance shall provide for a minimum of thirty (30) days prior written notice to the COUNTY of any change, cancellation, or nonrenewal of the required insurance. It is the CONSULTANT's specific responsibility to ensure that any such notice is provided within the stated timeframe to the certificate holder.

Certificate holder shall be:

LAKE COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA,
AND THE BOARD OF COUNTY COMMISSIONERS.
P.O. BOX 7800
TAVARES, FL 32778-7800

Certificate of insurance shall evidence a waiver of subrogation in favor of the COUNTY, that coverage shall be primary and noncontributory, and that each evidenced policy includes a Cross Liability or Severability of Interests provision, with no requirement of premium payment by the COUNTY.

The CONSULTANT shall be responsible for subcontractors and their insurance. Subcontractors are to provide Certificates of Insurance to the COUNTY evidencing coverage and terms in accordance with the CONSULTANT's requirements.

All self-insured retentions shall appear on the certificate(s) and shall be subject to approval by the COUNTY. At the option of the COUNTY, the insurer shall reduce or eliminate such self-insured retentions, or the CONSULTANT shall be required to procure a bond guaranteeing payment of losses and related claims expenses.

The COUNTY shall be exempt from, and in no way liable for, any sums of money that may represent a deductible or self-insured retention in any insurance policy. The payment of such deductible or self-insured retention shall be the sole responsibility of the CONSULTANT and/or subcontractor providing such insurance.

Failure to obtain and maintain such insurance as set out above will be considered a breach of contract and may result in termination of this Agreement for default.

Neither approval by the COUNTY of any insurance supplied by the CONSULTANT or subcontractor(s), nor a failure to disapprove that insurance, shall relieve the CONSULTANT of full responsibility for liability, damages, and accidents as set forth herein.

6.4 Indemnity. To the extent permitted by law, the CONSULTANT shall indemnify and hold harmless the COUNTY and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorney's fees and costs of defense, which the COUNTY or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of the agreement by the CONSULTANT or its employees, agents, servants, partners, principals, or subcontractors. The CONSULTANT shall pay all claims and losses in connection therewith, and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the COUNTY, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may be incurred thereon. The CONSULTANT expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the CONSULTANT shall in no way limit the responsibility to indemnify, keep and save harmless and defend the COUNTY or its officers, employees, agents and instrumentalities as herein provided.

6.5 Independent Contractor. The CONSULTANT agrees that it shall be acting as an independent contractor and shall not be considered or deemed to be an agent, employee, joint venturer, or partner of the COUNTY. The CONSULTANT shall have no authority to contract for or bind the COUNTY in any manner and shall not represent itself as an agent of the COUNTY or as otherwise authorized to act for or on behalf of the COUNTY.

6.6 Public Records / Copyrights:

A. All electronic files, audio and/or video recordings, and all papers pertaining to any activity performed by the CONSULTANT for or on behalf of the COUNTY shall be the property of the COUNTY and will be turned over to the COUNTY upon request. In accordance with Florida "Public Records" law, Chapter 119, Florida Statutes, each file and all papers pertaining to any activities performed for or on behalf of the COUNTY are public records available for inspection by any person even if the file or paper resides in the CONSULTANT's office or facility. All of CONSULTANT's records with respect to any matters covered by this Agreement shall be maintained for at least three (3) complete calendar years following contract completion, or in accordance with any federal grant requirements, whichever period is longer. In the event any work is subcontracted, CONSULTANT shall similarly require each subcontractor to maintain and allow access to such records. Prior to the close out of the Agreement, the CONSULTANT shall appoint a records custodian to handle any records requests and shall provide the custodian's name and telephone number(s) to the COUNTY.

B. Any copyright derived from this Agreement shall belong to the author. The author and the CONSULTANT shall expressly assign to the COUNTY nonexclusive, royalty free rights

to use any and all information provided by the CONSULTANT in any deliverable and/or report for the COUNTY's use which may include publishing in COUNTY documents and distribution as the COUNTY deems to be in the COUNTY's best interests. If anything included in any deliverable limits the rights of the COUNTY to use the information, the deliverable shall be considered defective and not acceptable and the CONSULTANT will not be eligible for any compensation.

6.7 Right to Audit. The COUNTY reserves the right to require CONSULTANT to submit to an audit by any auditor of the COUNTY'S choosing. CONSULTANT shall provide access to all of its records which relate directly or indirectly to this Agreement at its place of business during regular business hours. CONSULTANT shall retain all records pertaining to this Agreement and upon request make them available to the COUNTY for three (3) years following expiration of the Agreement. CONSULTANT agrees to provide such assistance as may be necessary to facilitate the review or audit by the COUNTY to ensure compliance with applicable accounting and financial standards. Additionally, CONSULTANT agrees to include the requirements of this provision in all contracts with subcontractors and material suppliers in connection with the work performed hereunder.

If an audit inspection or examination pursuant to this section discloses overpricing or overcharges of any nature by the CONSULTANT to the COUNTY in excess of one percent (1%) of the total contract billings, in addition to making adjustments for the overcharges, the reasonable actual cost of the COUNTY'S audit shall be reimbursed to the COUNTY by the CONSULTANT. Any adjustments and/or payments which must be made as a result of any such audit or inspection of the CONSULTANT'S invoices and/or records shall be made within a reasonable amount of time, but in no event shall the time exceed ninety (90) days, from presentation of the COUNTY'S audit findings to the CONSULTANT.

6.8 Codes and Regulations. All work completed under this Agreement shall conform to all applicable federal, state and local statutes, codes, regulations and ordinances.

6.9 Public Entity Crimes. Pursuant to Section 287.133(2)(a), Florida Statutes, a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not be awarded or perform work on a contract to provide any goods or services to a public entity, including the construction or repair of a public building or a public work, may not lease real property to a public entity, and may not perform as a contractor, subcontractor, supplier, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided for in Section 287.017, Florida Statutes, for Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. By executing this Agreement, CONSULTANT confirms that CONSULTANT has not been placed on the convicted vendor's list as stated herein.

6.10 Prohibition Against Contingent Fees. The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee

working solely for the CONSULTANT, any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of this Agreement.

6.11 Key Contractor Personnel. In signing this Agreement, the CONSULTANT is representing that the personnel CONSULTANT listed in its proposal shall be available to perform the services described for the COUNTY, barring illness, accident, or other unforeseeable events of a similar nature, in which case the CONSULTANT must be able to promptly provide a qualified replacement. In the event the CONSULTANT wishes to substitute personnel for those listed in the CONSULTANT's proposal, the CONSULTANT shall propose a person with equal or higher qualifications, and each replacement person is subject to prior written COUNTY approval. In the event the requested substitute personnel is not satisfactory to the COUNTY and the matter cannot be resolved to the satisfaction of the COUNTY, the COUNTY reserves the right to cancel this Agreement for cause.

6.12 Termination for Convenience. The COUNTY, at its sole discretion, reserves the right to terminate this contract upon thirty (30) days written notice. Upon receipt of such notice, the CONSULTANT shall not incur any additional costs under this Agreement. The COUNTY shall be liable only for reasonable costs incurred by the CONSULTANT prior to notice of termination. The COUNTY shall be the sole judge of "reasonable costs."

6.13 Termination for Unavailability of Funds. When funds are not appropriated or otherwise made available to support continuation of performance in a current or subsequent fiscal year, the Agreement shall be cancelled and the CONSULTANT shall be reimbursed for the reasonable value of any non-recurring costs incurred amortized in the price of the supplies or services/tasks delivered under the Agreement.

6.14 Termination for Cause. The COUNTY reserves the right to terminate this Agreement, in part or in whole, or affect other appropriate remedy in the event the CONSULTANT fails to perform in accordance with the terms and conditions stated herein. The COUNTY further reserves the right to suspend or debar the CONSULTANT in accordance with the COUNTY ordinances, resolutions and/or administrative orders. The CONSULTANT will be notified by letter of the COUNTY'S intent to terminate. In the event of termination for default, the COUNTY may procure the required goods and/or services from any source and use any method deemed in its best interest. All re-procurement cost shall be borne by the CONSULTANT.

6.15 Return of Materials. Upon the request of the COUNTY, but in any event upon termination of this Agreement, CONSULTANT shall surrender to the COUNTY all memoranda, notes, records, drawings, manuals, computer software, and other documents or materials pertaining to the services hereunder, that were furnished to the CONSULTANT by the COUNTY pursuant to this Agreement.

6.16 Accuracy. The CONSULTANT is responsible for the professional quality, technical accuracy, timely completion and coordination of all the services furnished hereunder. The CONSULTANT shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in resulting from the services provided herein.

6.17 Conflict of Interest. CONSULTANT agrees that it will not engage in any action that would create a conflict of interest in the performance of its obligations pursuant to this Agreement or which would violate or cause others to violate the provisions of Part III, Chapter 112, Florida Statutes, relating to ethics in government. Further, CONSULTANT hereby certifies that no officer, agent, or employee of COUNTY has any material interest either directly or indirectly in the business of CONSULTANT conducted here and that no such person shall have any such interest at any time during the term of this Agreement.

6.18 Fraud or Misrepresentation. Any individual, corporation or other entity that attempts to meet its contractual obligations with the COUNTY through fraud, misrepresentation or material misstatements, may be debarred for up to five (5) year. The COUNTY as a further sanction may terminate or cancel any other contracts with such individual, corporation or entity with such being held responsible for all direct or indirect costs associated with termination or cancellation, including attorney's fees.

6.19 Prime Contractor. The CONSULTANT shall act as the prime contractor and shall assume full responsibility for the successful performance under this Agreement. The CONSULTANT shall be considered the sole point of contact with regard to meeting all the requirements of this Agreement. All subcontractors will be subject to advance review by the COUNTY in regards to competency and security concerns. After the award of this Agreement, no changes in subcontractors will be made without the consent of the COUNTY. The CONSULTANT shall be responsible for all insurance, permits, licenses and related matters for any and all subcontractors. Even if the subcontractor is self-insured, the COUNTY may require the CONSULTANT to provide any insurance certificates required by the work to be performed.

6.20 Warranty. All warranties express and implied, shall be made available to the COUNTY for goods and services covered by this Agreement. All goods furnished shall be fully guaranteed by the CONSULTANT against factory defects and workmanship. At no expense to the COUNTY, the CONSULTANT shall correct any and all apparent and latent defects that may occur within the manufacturer's standard warranty period. The special conditions of the solicitation may supersede the manufacturer's standard warranty.

6.21 Truth in Negotiation Certificate.For all lump-sum or cost-plus fixed fee agreements exceeding \$150,000, the awarded firm may be required to execute a truth in negotiation certificate stating that the wage rates and other factual unit costs are accurate, complete and current, at the time of contracting.

Article 7. General Conditions

7.1 This Agreement is made under, and in all respects shall be interpreted, construed, and governed by and in accordance with, the laws of the State of Florida. Venue for any legal action resulting from this Agreement shall lie in Lake County, Florida. In the event that a suit is brought for the enforcement of any term of this Agreement, or any right arising there from, the parties expressly waive their respective rights to have such action tried by jury trial and hereby consent to the use of non-jury trial for the adjudication of such suit.

7.2 Neither Party may assign any rights or obligations under this Agreement to any other party unless specific written permission from the other party is obtained.

7.3 The services rendered through this Agreement shall not be deemed complete until accepted by the COUNTY, and shall be in compliance with the terms herein, fully in accord with the specifications and of the highest quality. In the event that the service does not conform to the specifications, the COUNTY reserves the right to terminate the Agreement and shall not be responsible to pay for any such service.

7.4 The captions utilized in this Agreement are for the purposes of identification only and do not control or affect the meaning or construction of any of the provisions hereof.

7.5 This Agreement shall be binding upon and shall inure to the benefit of each of the parties and of their respective successors and permitted assigns.

7.6 This Agreement may not be amended, released, discharged, rescinded or abandoned, except by a written instrument duly executed by each of the parties hereto.

7.7 The failure of any party hereto at any time to enforce any of the provisions of this Agreement will in no way constitute or be construed as a waiver of such provision or of any other provision hereof, nor in any way affect the validity of, or the right thereafter to enforce, each and every provision of this Agreement.

7.8 During the term of this Agreement the CONSULTANT assures the COUNTY that it is in compliance with Title VII of the 1964 Civil Rights Act, as amended, and the Florida Civil Rights Act of 1992, in that the CONSULTANT does not on the grounds of race, color, national origin, religion, sex, age, disability or marital status, discrimination in any form or manner against the CONSULTANT employees or applicants for employment. The CONSULTANT understands and agrees that this Agreement is conditioned upon the veracity of this statement of assurance.

7.9 The CONSULTANT shall at all times comply with all Federal, State and local laws, rules and regulations.

7.10 The COUNTY, at its sole discretion, reserves the right to terminate this Agreement upon thirty (30) days written notice. Upon receipt of such notice, CONSULTANT shall not incur any additional costs under this Agreement. The COUNTY shall be liable for reasonable costs incurred by the CONSULTANT prior to notice of termination. The COUNTY shall be the sole judge of 'reasonable costs.'

7.11 The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

7.12 The parties shall exercise every reasonable effort to meet their respective obligations hereunder, but shall not be liable for delays resulting from force majeure or other causes beyond

their reasonable control, including, but not limited to, compliance with any Government law or regulation, acts of nature, acts or omissions of the other party, Government acts or omissions, fires, strikes, national disasters, wars, riots, transportation problems and/or any other cause whatsoever beyond the reasonable control of the parties. Any such cause will extend the performance of the delayed obligation to the extent of the delay so incurred.

7.13 Wherever provision is made in this Agreement for the giving, service or delivery of any notice, statement or instrument other than monthly progress reports and regular invoices, such notice shall be in writing and shall be deemed to have been duly given, served and delivered, if delivered by hand or mailed by United States registered or certified mail or sent by facsimile, addressed as follows:

If to CONSULTANT:

Randy Gomez
8415 Allison Pointe Blvd, Ste. 300
Indianapolis, IN 46250-4205

If to COUNTY:

Lake County Manager
P.O. Box 7800
Tavares, FL 32778-7800

With a copy to:

County Attorney
P.O. Box 7800
Tavares, Florida 32778

Each party hereto may change its mailing address by giving to the other party hereto, by hand delivery, United States registered or certified mail notice of election to change such address.

Article 8. Scope of Agreement

8.1 This Agreement is intended by the parties hereto to be the final expression of their Agreement, and it constitutes the full and entire understanding between the parties with respect to the subject hereof, notwithstanding any representations, statements, or agreements to the contrary heretofore made.

8.2 This Agreement contains the following Exhibits:

| | |
|------------------|---------------------------|
| EXHIBIT A | General Scope of Services |
| EXHIBIT B | Hourly Rates |

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: COUNTY through its Board of County Commissioners, signing by and through its Chairman, authorized to execute same by Board action on the _____ day of _____, 2011, and by CONSULTANT through its duly authorized representative.

CONSULTANT

THE NYHART COMPANY

Randy Gony

This 8th day of November, 2011.

COUNTY

Barnett Schwartzman
Director of Procurement Services

This 28th day of November, 2011.

Approved as to form and legality:

Sanford A. Minkoff
County Attorney

EXHIBIT A: GENERAL SCOPE OF SERVICES

Section 2.1.1 Introduction

In 2004, the Governmental Accounting Standards Board (GASB) issued Statement 45, "Accounting and Financial Reporting by Employers for Post-Employment Benefits (OPEB) Other than Pensions", which requires public agencies to report their costs and obligations pertaining to health and other benefits of current and future retired employees. OPEB refers to medical, dental, vision and other healthcare-related benefits provided to retired employees and their dependents and beneficiaries. The County provides eligible employees and retirees the choice between an HMO or PPO Medical plan. Coverage under the Self-insured Group Health Plan is a benefit available to employees of the Lake County Board of County Commissioners and other entities as detailed below. Such coverage provides comprehensive health benefits to the employees and their dependents. Employees who retire from Lake County are eligible for benefit continuation at the full premium cost for medical and dental care. Lake County currently provides health benefits to approximately 1300 active employees and 23 retired employees as of October 1, 2011. The Lake County Clerk and Tax Collector will begin participation October 1, 2011.

The County self insures its Medical Health Benefit and maintains stop loss coverage with a \$200,000 specific deductible and a corridor deductible of \$44,200.

The GASB standards for OPEB plan accounting require public sector employees, such as Lake County Board of County Commissioners (LCBCC) to begin to accrue the costs of retiree health benefits. Employers must calculate an "Annual Required Contribution" (ARC), consisting of two components:

- A. Normal costs (the portion of the present value of total projected benefits assigned to the current year by the actuarial cost method used by the employer);
- B. An amortization component (the amount necessary to amortize the total unfunded actuarial accrued liability for its OPEB obligations.)

The actuarial study performed by the Contractor shall provide information to enable Lake County BCC to identify and manage the costs and liabilities associated with its retiree health and dental benefits.

The following agencies are covered under Lake County's benefits plan:

- Board of County Commissioners
- Property Appraiser
- Supervisor of Elections
- Water Authority
- Lake Sumter Metropolitan Planning Organization
- Lake Emergency Medical Services, Inc.

- Lake County Clerk of Courts (as of 10/1/2011)

Section 2.1.2 Scope of Service

Each proposal shall be made on the basis of and shall meet or exceed each of the requirements contained herein. The actuary will assist the County in complying with the GASB 45 requirement that will establish standards for the measurement, display and recognition of OPEB expenses and liabilities. The minimum requirement of the actuarial study shall include the following, as of September 30, 2012, in a written report:

- A. Develop age-specific initial per capita costs on an actuarial basis for medical and prescription drug benefits (pre-65 and post-65), and other "benefit types" necessary for projecting long-term costs (for at least 5 years).
- B. Actuarial value of benefits, separately identifying amounts for actives and retirees including:
 - 1. Present Value of Future Benefits
 - 2. Actuarial Accrued Liability
 - 3. Plan Assets and Unfunded Actuarial Accrued Liability (UAAL)
 - 4. Normal Cost
- C. GASB 45 accounting information
 - 1. Annual Required Contribution (ARC), as dollar amount and percentage of payroll identifying (1) Normal Costs and (2) the outstanding balance and amortization amount for each component of the UAAL;
 - 2. Annual OPEB Cost (AOC), as a dollar amount and percentage of payroll; and
 - 3. Reconciliation of Net OPEB obligation (NOO) during the current year, and projected NOO) at end of year.
- D. Information to assist the County in future budgeting, including;
 - 1. The ten year "pay-as-you-go" cost;
 - 2. Annual Required Contribution (ARC) to fund retiree benefits over the working lifetime of eligible employees; and
 - 3. Recommendations (as appropriate) on managing the liability.

All costs and liabilities should be separated between active employees and current retirees between pre-65 and post-65 where applicable. In addition, it may be necessary for the actuary to further breakdown results internally to facilitate calculation, such as to separate current and future retirees.

- E. The consultant will be required to consult and recommend to Lake County a methodology for and impact of funding OPEB. All recommendations must comply with all applicable State and Federal laws.
- F. The selected consultant will be expected to assist with oral presentations (to include handouts) to the Board of County Commissioners or others as deemed necessary. The consultant should also provide ongoing and open communications over the course of the study.
- G. Consultant will be required to review the plan after the first year of implementation and then every two years thereafter, during the term of the contract.

Section 2.1.3: Completion Schedule

Provide written report, per fiscal year, sixty (60) days after receipt of data requested.

Section 2.2: Additional Work

Although this solicitation and resultant contract identifies specific services to be provided, it is hereby agreed and understood that additional work may be added to this contract at the option of the County. When required, the contractor will be invited to submit price quotes for these additional services. If these quotes are determined to be fair and reasonable, then the additional work will be awarded to the current contract. The additional work shall be added to this contract by former modification.

Section 2.3: Minimum Qualifications

Minimally, the qualifications of the firm performing the actuarial analysis shall include the following:

- A. Firm shall have been engaged in the business of health and pension actuarial analysis and have proven quantifiable ability in this area for a period of no less than five (5) years.
- B. The individual who will be performing the work must be a Fellow of the Casualty Actuarial Society and a Member of the American Academy of Actuaries.
- C. The firm shall be an independent entity.

- D. An insurance company, third party claims administrator or similar organization shall not be considered qualified. Additionally, if the majority ownership of the proposing organization is an insurance company or similar organization referenced in this item, then the proposing organization will not be considered qualified.

PROPOSED HOURLY BILLING RATES

These rates shall be used in conjunction with the "Fee Schedule" on page 18 and also for additional work requested

[illegible]

